**THE HON'BLE SRI JUSTICE C.V.RAMULU**

**WRIT PETITION NO.611 OF 2006**

**Date: 17th November 2006**

Between:

1. P.Narayana Swamy, s/o P.Gurappa,
   aged 56 years, President,
   Kadapa District N.G.Os Cooperative
   House Buildings Society, Kadapa,
   Kadapa District and 8 others.

.... Petitioners.

And

1. The Government of Andhra Pradesh,
   rep. by its Principal Secretary
   Housing (CH (1)) Department,
   Secretariat, Hyderabad and 3 others.

.... Respondents.

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**ORDER:**

This writ petition is filed seeking a writ of Mandamus declaring Memo No.5171/Ch(1)/2005-1, dated 30.12.2005, issued by the first respondent, as arbitrary and illegal.

2. Under the impugned Memo dated 30.12.2005 issued by the Principal Secretary to the Government of Andhra Pradesh, while contemplating a detailed enquiry under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act'), superseded the Managing Committee by appointing Official Person-in-charge.

3. While admitting the writ petition, this Court granted interim

suspension of the impugned Memo dated 30.12.2005 passed by the Government of Andhra Pradesh, Housing (CH(1) Department. Thereafter, a vacate stay petition was filed. After hearing both the parties, the vacate stay petition was dismissed and the interim order passed on 06.01.2006 was made absolute. Now, the writ petition is coming up for final hearing.

4. Section 34 of the Act, contemplates supersession of the committee. The Section reads as hereunder.

> "34. Supersession of the committee:- (1) If in the opinion of the Registrar, the committee is not functioning properly or willfully disobeys or fails to comply willfully with any lawful order or direction issued by the Registrar under this Act or the rules, he may, after giving the committee an opportunity of making its representation, by order supersede the committee from a specified date; and appoint either a person (hereinafter referred to as the special officer) or a committee of two or more persons (hereinafter referred to as the managing committee) to manage the affairs of the society for a period not exceeding two years, specified in the order which period, may, at the discretion of the Registrar, be extended from time to time, so however, that the aggregate period shall not exceed three years."

5. Learned counsel for the petitioners states that Section 34 of the Act contemplates passing of an order of supersession by Registrar. Whereas, in this case, the Principal Secretary to the Government, who has no power, whatsoever, under the law has passed the impugned order. Apart from that, no notice of any kind was issued while passing the impugned memo. Therefore, the

impugned memo is liable to be set aside.

6. Learned Government Pleader appearing for the respondents strenuously contended that the impugned memo is passed under Section 34 of the Act while contemplating an enquiry under Section 51 of the Act. A person in-charge was sought to be appointed since the committee has committed certain irregularities.

7. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned memo and other material made available on record.

8. At the outset, I am of the opinion that the impugned memo dated 30.12.2005 does not stand the scrutiny of law. Firstly, why the Government issued such a memo. There are no reasons furnished for the same. Strictly speaking, the Registrar of the Cooperative Societies should have passed such an order, after putting the committee on notice and after hearing them. All these ingredients are absent in the impugned proceedings. The impugned proceedings seems to have been passed pursuant to representation received from one D.Vijaya Bhaskar Rao and other members of the Kadapa District N.G.Os. Cooperative House Building Society Limited, Kadapa, dated 30.12.2005, the day on which the impugned order was passed. This itself shows the way in which the first respondent wanted to exercise his power arbitrarily. Neither the records were available with them nor any enquiry was conducted nor any notice was issued to the elected

managing committee of the society before passing the impugned order dated 30.12.2005 purported to be under Section 34 of the Act. The order passed is in gross violation of principles of natural justice. On this ground alone, the impugned memo is liable to be set aside.

9. The writ petition is accordingly allowed and the impugned memo is set aside. No order as to costs.

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**C.V.RAMULU, J.**

Date: 17th November 2006.
BSB